ENTERED

March 06, 2020 David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

EVANSTON INSURANCE	§	
COMPANY,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 4:17-CV-2048
	§	
OPF ENTERPRISES, LLC,	§	
	§	
Defendant.	§	

ORDER

On February 13, 2020, the Court entered an Order denying Plaintiff Evanston Insurance Company's ("Evanston") motion for summary judgment and granting Defendant OPF Enterprises, LLC's ("OPF") motion for summary judgment. ECF No. 51. On February 27, 2020, OPF filed a motion for attorney's fees and entry of final judgment. ECF No. 54. The motion is DENIED as to attorney's fees and GRANTED as to entry of final judgment.

OPF seeks attorney's fees under the Texas Civil Practice and Remedies Code § 38.001(8), which allows a prevailing party to recover attorney's fees for a breach of contract claim. This is an action for Declaratory Judgment; no breach of contract claim was ever asserted by either party. OPF, therefore, is not a prevailing party under § 38.001(8) and cannot collect attorney's fees. *See Integon Nat'l Ins. Co. v. Rizo*, No. 14-CV-1641, 2016 WL 3647796, at *3 (N.D. Tex. Mar. 22, 2016).

The Court will separately file an entry of final judgment.

Signed at Houston, Texas, on March 6, 2020.

Dena Hanovice Palermo United States Magistrate Judge